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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,651	09/15/2003	Bart De Strooper	2676-6086US	2464
24247	7590	05/31/2006	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			EMCH, GREGORY S	
			ART UNIT	PAPER NUMBER
			1649	
DATE MAILED: 05/31/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/662,651	Applicant(s) STROOPER ET AL.	
	Examiner Gregory S. Emch	Art Unit 1649	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
 13. ☐ Other: _____


JANET L. ANDRES
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: Rejoinder of claim 32 would require further consideration under 112(1) and 112(2).

Continuation of 11. does NOT place the application in condition for allowance because: The outstanding rejection under 35 U.S.C. 102b is maintained for reasons of record and as set forth herein. MPEP 2111.03 states, "absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, 'consisting essentially of' will be construed as equivalent to 'comprising.'" See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355 ('PPG could have defined the scope of the phrase consisting essentially of' for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention'). See also AK Steel Corp. v. Sollac, 344 F.3d 1234, 1240-41, 68 USPQ2d 1280, 1283-84 (Fed. Cir. 2003)." Accordingly, Applicants' disclosure does not limit the scope of "consisting essentially of." As stated previously, claims 46 and 50 use the open language "consisting essentially of", thus encompassing more than what is included in SEQ ID NOs: 5, 8 and 13. The '153 patent discloses polypeptides with amino acid sequences that are 100% identical to Applicant's SEQ ID NOs: 5, 8 and 13. Also, although the polypeptides of the '153 patent are larger than Applicant's SEQ ID NOs: 5, 8 and 13, said patent discloses that the polypeptides of the invention include fragments of the full-length proteins. Additionally, although the Cordell et al. patent did not appreciate the functional limitation of inhibiting the interaction between a presenilin and a type I membrane protein, this would be an inherent property of the polypeptides of the '153 patent, since said polypeptides encompass proteins that "consist essentially of" (i.e. comprise) SEQ ID NOs: 5, 8 and 13.